

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER**DO NOT WRITE IN THIS SPACE**

Case

10-CA-247965

Date Filed

September 9, 2019**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Kumho Tire Georgia		b. Tel. No. (478) 812-9595
		c. Cell No.
		f. Fax No.
d. Address (Street, city, state, and ZIP code) 3051 Kumho Pkwy GA Macon 31216-_____	e. Employer Representative Kim Hyunho President	g. e-Mail hhkim@kumhotire.com
		h. Number of workers employed 325
i. Type of Establishment (factory, mine, wholesaler, etc.) Tires	j. Identify principal product or service Tire Manufacturing	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 3 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

--See additional page--

3. Full name of party filing charge (if labor organization, give full name, including local name and number)Keren Wheeler
United Steelworkers

Title:

4a. Address (Street and number, city, state, and ZIP code)60 Boulevard of the Allies
PA PITTSBURGH 15222-_____4b. Tel. No.
(412) 562-2413

4c. Cell No.

4d. Fax No.

4e. e-Mail
kwheeler@usw.org**5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)****6. DECLARATION**

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Keren Wheeler

Keren Wheeler

(signature of representative or person making charge)

Title: (Print/type name and title or office, if any)

Tel. No.
(412) 562-2413

Office, if any, Cell No.

Fax No.

e-Mail
kwheeler@usw.org60 Boulevard of the Allies
Address PITTSBURGH PA 15222-_____09/6/2019 18:59:48
(date)**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)****PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Basis of the Charge

8(a)(3)

Within the previous six months, the Employer disciplined or retaliated against an employee(s) because the employee(s) joined or supported a labor organization and in order to discourage union activities and/or membership.

Name of employee disciplined/retaliated against	Type of discipline/retaliation	Approximate date of discipline/retaliation
(b) (6), (b) (7)(C)	suspension	(b) (6), (b) (7)(C) 2019

Additional Information in Support of Charge

Charging Party Name : Keren Wheeler

Inquiry Number : (b) (6), (b) (7)(C)

Date Submitted : 09/6/2019 18:59:48

Please provide a brief description of the specific conduct involved in your charge. The information you provide may be viewed by the charged party in the event of a formal proceeding, so PLEASE DO NOT GIVE A DETAILED ACCOUNT OF YOUR CHARGE OR A LIST OF POTENTIAL WITNESSES AT THIS TIME. A Board Agent will contact you to obtain this and other detailed information after your charge is docketed. After you submit this E-Filed Charge form, you will receive a confirmation email with an Inquiry Number (Sample Inquiry Number: 1-1234567890) and a link to the E-Filing web page. You may use the link and the Inquiry number provided in the email to e-file any additional documents you wish to present in support of your charge.

Additional Information Provided:

On (b) (6), (b) (7)(C) 2019, through its agents (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), the above-referenced Employer indefinitely suspended employee (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) was a known union supporter and because (b) (6), (b) (7)(C) engaged in activities in support of the Union. The suspension took place during the critical period of a union election campaign.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 10
233 Peachtree St NE
Harris Tower Ste 1000
Atlanta, GA 30303-1504

Agency Website: www.nlrb.gov
Telephone: (404)331-2896
Fax: (404)331-2858



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September 10, 2019

Kim Hyunho, President
Kumho Tire Georgia
3051 Kumho Pkwy
Macon, GA 31216

Re: Kumho Tire Georgia
Case 10-CA-247965

Dear Hyunho:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney Laura Evins whose telephone number is (470)343-7482. If this Board agent is not available, you may contact Supervisory Field Attorney Matthew Turner whose telephone number is (470)343-7497.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board

agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office

upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Scott C. Thompson', with a long horizontal flourish extending to the right.

SCOTT C. THOMPSON
Acting Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER

10-CA-247965

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)**2. TYPE OF ENTITY**

[] CORPORATION [] LLC [] LLP [] PARTNERSHIP [] SOLE PROPRIETORSHIP [] OTHER (Specify)

3. IF A CORPORATION or LLCA. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS**5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box): [] CALENDAR YR [] 12 MONTHS or [] FISCAL YR (FY dates)

YES NO

A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (Check the largest amount)
[] \$100,000 [] \$250,000 [] \$500,000 [] \$1,000,000 or more If less than \$100,000, indicate amount.I. Did you **begin operations within the last 12 months?** If yes, specify date: _____**10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**

[] YES [] NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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September 10, 2019

Keren Wheeler
United Steelworkers
60 Boulevard of the Allies
Pittsburgh, PA 15222

Re: Kumho Tire Georgia
Case 10-CA-247965

Dear Wheeler:

The charge that you filed in this case on September 09, 2019 has been docketed as case number 10-CA-247965. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney Laura Evins whose telephone number is (470)343-7482. If this Board agent is not available, you may contact Supervisory Field Attorney Matthew Turner whose telephone number is (470)343-7497.

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Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant

information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



Scott C. Thompson
Acting Regional Director

cc: Keren Wheeler
60 Boulevard of the Allies
Pittsburgh, PA 15222

Copy of charge only sent to:

David R. Jury, General Counsel
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, AI&SWIU
60 Boulevard of the Allies, Room 807
Pittsburgh, PA 15222-1214



577 Mulberry St.
Suite 710
Macon, GA 31201-8588
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MHaas@constangy.com
478.621.2426

October 15, 2019

Laura Evins
Field Attorney
National Labor Relations Board
Region 10
233 Peachtree St NE Harris Tower, Suite 1000
Atlanta, GA 30303-1504

RE: Kumho Tires, 10-CA-247965

Dear Mrs. Evins:

This represents Employer's position regarding the above-referenced unfair labor practice charge, as described in the letter dated September 10, 2019. Employer denies violating the National Labor Relations Act in any fashion.

(b) (6), (b) (7)(C) Disciplinary History

(b) (6), (b) (7)(C) hereinafter (b) (6), (b) (7)(C) was hired by Employer in (b) (6), (b) (7)(C) as a (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) (Exhibit A) was suspended without pay beginning on (b) (6), (b) (7)(C) 2019 through (b) (6), (b) (7)(C) 2019 for the reasons described below.

(b) (6), (b) (7)(C) was formally disciplined on two separate occasions within the period of (b) (6), (b) (7)(C) through (b) (6), (b) (7)(C) 2019, both of which had nothing to do with (b) (6), (b) (7)(C) support for the union or (b) (6), (b) (7)(C) participation in union activity.¹

During the evening shift on August 15, 2019, (b) (6), (b) (7)(C) attempted to contact the (b) (6), (b) (7)(C) department about an issue that (b) (6), (b) (7)(C) was experiencing. Typically, there are two (b) (6), (b) (7)(C) employees on each shift so that employee issues can be resolved quickly without interrupting production. However, (b) (6), (b) (7)(C) could not reach (b) (6), (b) (7)(C) or the other (b) (6), (b) (7)(C) team member after making numerous attempts. Other employees also attempted to contact (b) (6), (b) (7)(C) but were unsuccessful. As a result, certain production processes were interrupted

¹ (b) (6), (b) (7)(C) received a verbal counseling in (b) (6), (b) (7)(C) of 2018 for violation of the attendance policy. (Exhibit B). (b) (6), (b) (7)(C) also received a written warning of (b) (6), (b) (7)(C) 2019 for sleeping on the job. (Exhibit C).

for almost three hours. (b) (6), (b) (7)(C) received written discipline from (b) (6), (b) (7)(C) and reminded that (b) (6), (b) (7)(C) failure to respond to employee inquiries was unacceptable. (Exhibit D).

The (b) (6), (b) (7)(C) 2019, Incident

On (b) (6), (b) (7)(C) 2019, (b) (6), (b) (7)(C) began distributing shirts to other employees at their work-stations during working time and in a working area, even though company policies and procedures prohibited such conduct. (b) (6), (b) (7)(C) was aware of these particular policies and procedures and signed an acknowledgment of these policies upon beginning (b) (6), (b) (7)(C) employment with Kumho. (Exhibit E). (b) (6), (b) (7)(C) did not have prior authorization to hand out shirts during work time in a work area and should have been performing (b) (6), (b) (7)(C) job duties during this time. (b) (6), (b) (7)(C) violated numerous company rules, which include:

PROHIBITED CONDUCT

Listed below are some of the prohibited acts that, if committed, will be grounds for disciplinary action, up to and including termination. This list of prohibited conduct is illustrative only; other types of conduct injurious to security, personal safety, productivity, employee welfare and the Company's operations or any other Company interest may also be prohibited. Violation of the following will result in discipline up to and including termination:

...

5. Unauthorized use of Company equipment, time, materials, or facilities.

...

17. Poor job performance or productivity.

...

19. Failure to observe working schedules, including rest and meal periods.

SOLICITATION AND DISTRIBUTION OF LITERATURE

The Company has established rules applicable to all employees governing solicitation, distribution of written material, and entry onto the premises and work areas. All employees are expected to comply strictly with these rules.

No employee shall solicit or promote support for any cause or organization during his or her working time or during the working time of the employee or employees at whom such activity is directed.

No employee shall distribute or circulate any written or printed material in work areas at any time, or during his or her working time or during the working time of the employee or employees at whom such activity is directed.

(Exhibit F). (b) (6), (b) (7)(C) made the decision to suspend (b) (6), (b) (7)(C) after reviewing information with (b) (6), (b) (7)(C) pending a further review of the disciplinary incidents and (b) (6), (b) (7)(C) file. (Exhibit G).

A meeting was held on September 17, 2019, between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) to discuss the violations committed by (b) (6), (b) (7)(C). During the meeting, (b) (6), (b) (7)(C) acknowledged that (b) (6), (b) (7)(C) was suspended for passing out shirts during working time and in a work area. (b) (6), (b) (7)(C) further stated that (b) (6), (b) (7)(C) was sorry for causing any problems. During the meeting, (b) (6), (b) (7)(C) did not make any comments or suggestions that (b) (6), (b) (7)(C) suspension was a result of (b) (6), (b) (7)(C) unprotected union support or activity that occurred during working time and in a working area. (b) (6), (b) (7)(C) was returned to work as of (b) (6), (b) (7)(C) 2019, after receiving a final warning from (b) (6), (b) (7)(C) (Exhibit H).

Similar Actions by Other Employees

Although (b) (6), (b) (7)(C) was an (b) (6), (b) (7)(C) union supporter at the time (b) (6), (b) (7)(C) suspension was wholly unrelated to any union or other protected activity in which (b) (6), (b) (7)(C) may have engaged. (b) (6), (b) (7)(C) had prior disciplinary history and violated clearly established company policies and procedures. The employer was well within its rights to terminate (b) (6), (b) (7)(C) employment. However, the employer provided (b) (6), (b) (7)(C) another chance to prove (b) (6), (b) (7)(C) was a reliable employee and merely suspended (b) (6), (b) (7)(C). Any other employee who engaged in similar behavior would have received similar discipline based on their prior disciplinary history. Employer is unaware of any production or maintenance employees distributing employer sponsored flyers, leaflets, or hats on the production floor during working time.

Team Leads were specifically instructed not to ask other employees if they wanted a hat. Team Leads may have had hats available to those who asked for a hat. Team Leads, who are considered supervisory management personnel, or other management personnel who may have given an employee a flyer, leaflet or hat.

Steelworkers equated distribution or solicitation by the company with distribution or solicitation by supervisory personnel. See 357 U.S. at 360, 78 S. Ct. 1268. Thus, evidence that supervisory personnel distributed anti-Union or other material in contravention of the Company's policy with impunity does not of itself support a finding that [disciplining an employee for distribution] constituted unlawful discrimination. However, evidence that other nonsupervisory employees had transgressed that policy without incurring disciplinary sanctions would support the finding of discrimination against [the employer].


Head Div., AMF, Inc. v. N.L.R.B., 593 F.2d 972 (10th Cir. 1979) (referencing Labor Board v. Steelworkers, 357 U.S. 357 (1958)). As such, even though Employer is unaware of any Team Leader or supervisory personnel distributing during work time in a work area, any instance of supervisory personnel distributing hats would be equated with distribution by Employer.

Laura Evins
Field Attorney
National Labor Relations Board
October 15, 2019
Page 4

Constangy, Brooks, Smith & Prophete, LLP

Therefore, based on the above, Employer respectfully requests the dismissal of this charge. If you require any additional information, please do not hesitate to contact me.

Sincerely,



W. Melvin Haas, III

WMH (b) (6), (b) (7)(C)
Attachments

October 28, 2019

Via e-file

Laura Evins, Attorney

Region 10

National Labor Relations Board

233 Peachtree Street, NE Suite 1000

Atlanta, GA 30303

Re: Kumho Tire Georgia, Case No. 10-CA-247965

Ms. Evins:

Charging Party USW submits this Initial Position Statement in support of the above-referenced charge against Kumho Tire Georgia (“Employer”), which concerns the Employer’s unlawful disciplinary suspension of employee (b) (6), (b) (7)(C), in violation of in violation of Sections 8(a)(1) and 8(a)(3) of the Act. (b) (6), (b) (7)(C) suspension violated the Act under both the standard in *Cal Spas*, 322 NLRB 41, 56 (1996), and under the *Wright Line* standard.

On (b) (6), (b) (7)(C) 2019, (b) (6), (b) (7)(C) was on (b) (6), (b) way to (b) (6), (b) a “first tire out” (FTO) call that (b) (6), (b) received on (b) (6), (b) radio. As a (b) (6), (b) (7)(C) employee, (b) (6), (b) does not have an assigned work station, and is required to walk from the locker room to the location of a call. On this occasion, (b) (6), (b) was walking from the locker room to the curing department to respond to the call for inspection (b) (6), (b) (7)(C) carries (b) (6), (b) (7)(C) when traveling to attend to an FTO call. On (b) (6), (b) clipboard, (b) (6), (b) (7)(C) carried USW T-shirts that (b) (6), (b) had picked up a few days before. The T-shirts had been requested by specific Kumho employees.

(b) (6), (b) (7)(C) took a direct path to the curing department. In order to reach the curing department, (b) (6), (b) had to pass through the “semi” department and the APU department. While passing through the APU department, (b) (6), (b) (7)(C) passed directly by employees who (b) (6), (b) knew had previously requested USW T-shirts. When, in the course of (b) (6), (b) direct route, (b) (6), (b) saw an employee who had requested a shirt, (b) (6), (b) handed the employee the shirt. (b) (6), (b) handed out four shirts on the way to the curing department through semi and APU.

(b) (6), (b) (7)(C) distribution caused no interruption to the production process. Each of the four interactions lasted a maximum of ten seconds. None of the employees had to stop working on their machine to receive a shirt. Receiving the shirts did not require any kind of verification or further interaction on the part of the employees. (b) (6), (b) (7)(C) did not need to, and in fact did not, deviate from (b) (6), (b) route to the FTO to make the distributions (b) (6), (b) distributed the shirts to employees who were at their work stations directly in (b) (6), (b) path to the curing department.

Based on this conduct, (b) (6), (b) (7)(C) was terminated on (b) (6), (b) (7)(C) 2019, but was eventually brought back to work on (b) (6), (b) (7)(C) 2019. Kumho issued a letter informing (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) conduct was cause for termination, but that the termination was being converted to a suspension. In the discipline issued on (b) (6), (b) (7)(C) in its (b) (6), (b) (7)(C) return to work letter, Kumho alleged that (b) (6), (b) (7)(C) went throughout the facility during (b) (6), (b) (7)(C) work time distributing shirts to other employees during their work time at their work stations without supervisory authorization and while (b) (6), (b) (7)(C) was] on Company time and should have been performing (b) (6), (b) (7)(C) job duties.” Kumho HR decided that these brief interactions violated a host of rules, including: “unauthorized use of Company time or facilities, causing, creating, or participating in a disruption of any kind during working hours or on company property, poor job performance or productivity; failure to observe working schedule; and distributing material during working hours without authorization.”

To prove a violation of Section 8(a)(3) and (1) under *Wright Line*, “the General Counsel bears the burden of proving by a preponderance of the evidence that animus against protected conduct was a motivating factor in the adverse employment action. If the General Counsel makes a showing of discriminatory motivation by proving protected activity, the employer's knowledge of that activity, and animus against protected activity, then the burden of persuasion shifts to the employer to prove that it would have taken the same action even in the absence of the protected activity.” *North Carolina License Plate Agency #18*, 346 NLRB 293, 294 (2006).

The distribution of USW T-shirts to employees who requested them was protected activity. The distribution of union materials is indisputably protected under Section 7. *Wal-Mart Stores*, 349 NLRB 1095 (2007). Moreover, the Employer plainly knew of (b) (6), (b) (7)(C) protected activity, as it is the asserted cause for (b) (6), (b) (7)(C) discipline.

There is also evidence sufficient to establish anti-union animus as a substantial motivating factor in the discipline. Unlawful employer motivation may be established by circumstantial evidence, including, among other things, (1) the timing of the employer's adverse action in relationship to the employee's protected activity, (2) the presence of other unfair labor practices, (3) statements and actions showing the employer's general and specific animus, (4) the disparate treatment of the discriminatee, (5) departure from past practice, and (6) evidence that an employer's proffered explanation for the adverse action is a pretext. *Kitsap Tenant Support Services, Inc.*, 366 NLRB No. 98, slip op. 11 (2018).

The Employer's anti-union animus is evident from its extensive record of unremedied unfair labor practices, as well as the timing of the discipline and a statement made to (b) (6), (b) (7)(C) about (b) (6), (b) (7)(C) USW T-shirt. In Case Nos. 10-CA-208255 and 10-CA-2018414, Administrative Law Judge Arthur Amchan found that Kumho had committed over thirty unfair labor practices around the time of the 2017 union election. These violations have never been remedied and stand as evidence of the Employer's anti-union animus. The discipline of (b) (6), (b) (7)(C) occurred on the second day of voting in a union election, which the Union won by 141-137, with 13 challenged ballots.

This timing demonstrates the Employer's intent to 'send a message' with (b) (6), (b) (7)(C) firing. Further, (b) (6), (b) (7)(C) wore (b) (6), (b) (7)(C) own USW shirt to work for the first time on the day of (b) (6), (b) (7)(C) termination / suspension. (b) (6), (b) (7)(C) commented on (b) (6), (b) (7)(C) shirt on that day, shortly before (b) (6), (b) (7)(C) was called in for discipline.

The litany of rule violations proffered by Kumho to explain the discipline is pretextual, and serves only to cover the real motivation—(b) (6), (b) (7)(C) protected activity of distributing USW shirts. This is evident on its face from the falsity of the majority of the allegations against (b) (6), (b) (7)(C). Under *Wright Line*, it is Kumho's burden to show that the Company would have suspended (b) (6), (b) (7)(C) for (b) (6), (b) (7)(C) activity even if (b) (6), (b) (7)(C) had not engaged in protected union activity. *Wal-Mart Stores*, 349 NLRB 1095 (2007). It is extremely unlikely that Kumho will be able to meet its burden. (b) (6), (b) (7)(C) conduct consisted solely of stopping very briefly to hand shirts to three employees on the way to (b) (6), (b) (7)(C) assignment—conduct which would not merit discipline absent the nature of the shirts and the fact that (b) (6), (b) (7)(C) was wearing a USW shirt on an election day.

The disciplinary documents issued to (b) (6), (b) (7)(C) exaggerate and mischaracterize the conduct in question, which consisted of seconds-long interactions with other employees along the direct route to the curing department. (b) (6), (b) (7)(C) did not deviate from (b) (6), (b) (7)(C) work schedule, did not disrupt production or have any impact on productivity, and did engage in disruptive behavior. (b) (6), (b) (7)(C) protected activity had no deleterious effect on (b) (6), (b) (7)(C) work performance or productivity.

The false characterizations of (b) (6), (b) (7)(C) actions are "indicative of illegal motivation." *Active Transp.*, 296 NLRB 431, 432 (1989). *See also S. Freedman & Sons*, 364 NLRB No. 82 (Aug. 25, 2016) (where employer asserted that employee was terminated for driving with an expired license and for lying during investigation, but the evidence showed that his license was not expired and he did not lie, reliance on the false reason was "evidence of improper motive"); *Golden State Foods*, 340 NLRB 382, 385 (2003) (stated reason for discharge was a "pretext for retaliating" against employee who was target of employer's anti-union animus, where employer had not previously imposed discipline for same issue, and failed to seek explanation from employee).

While the disciplinary documents do not mention the protected nature of (b) (6), (b) (7)(C) activity, the facially neutral justifications in those documents are belied by statements made to (b) (6), (b) (7)(C) by (b) (6), (b) (7)(C) supervisors at the time of the discipline. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) approached (b) (6), (b) (7)(C) in the workplace and told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had been "observed passing out union shirts." They then called (b) (6), (b) (7)(C) to the team lead office where (b) (6), (b) (7)(C) was issued discipline, and told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was called in because (b) (6), (b) (7)(C) was "observed giving out union shirts." When (b) (6), (b) (7)(C) asked for further explanation of the discipline, (b) (6), (b) (7)(C) was again told that the reason for the discipline was that (b) (6), (b) (7)(C) was observed passing out union shirts. The rule violations mentioned in the disciplinary documents are attempts to cover up that (b) (6), (b) (7)(C)

protected activity was the true reason for the discipline – a fact that was stated multiple times contemporaneous with the adverse action.

An employer's proffered reason for discipline will be found to be pretextual where the union supporter is treated disparately or disciplined more harshly than other similarly situated employees. *See Allstate Power Vac*, 357 NLRB No. 33 (Aug. 5, 2011) (proffered reason for discharge of union supporter was pretextual where there was no evidence that the employer had ever discharged an employee for the infraction for which employee was discharged); *Bliss Clearing Niagara*, 344 NLRB 296, 307-08 (2005) (inconsistent treatment of union activists compared with others similarly situated "cast legitimate doubt" on the employer's assertion that its discipline was based on the employees' poor performance). Where other employees are permitted to engage in solicitation for social purposes, the reliance on a no-solicitation policy for the disparate discipline of a known union supporter may be found to be pre-textual and unavailing. *St. Margaret Mercy Healthcare Centers*, 350 NLRB 203, 204 (2007) (where employee was issued discipline for soliciting co-worker to sign a union card, but other employees regularly made solicitations without being disciplined, employer's "proffered reason for the discipline was a pretext for disciplining [union supporter] for her earlier pro-union activity"). Significantly, a finding of pretext and unlawful discrimination may be made even where the employer maintains an otherwise lawful no-solicitation or no-distribution rule, and does not require a finding that the rule or its application to union activity is unlawful. *Id.*

Here, Kumho cannot show that it disciplines employees for interacting with other employees on their way to a work station for under one minute. Kumho cannot show that other employees have been disciplined for "unauthorized use of Company time or facilities, causing, creating, or participating in a disruption of any kind during working hours or on company property, poor job performance or productivity" or for "failure to observe working schedule" when they interact with other employees for forty seconds, or when they take a forty second pause for any reason on the way to their work station. It would be impossible to enforce such a harsh standard, and Kumho patently does not. A termination for a forty-second pause while traveling to a work station is particularly harsh, and supports a finding that the true motive was discriminatory.

Nor can Kumho show that it non-discriminatorily enforces a "no distribution" rule. Kumho permits employees to distribute materials, and even to solicit their co-workers, when the distributed materials are not USW T-shirts. For example, in early 2019, (b) (6), (b) (7)(C), a (b) (6), (b) (7)(C), solicited (b) (6), (b) (7)(C) fellow employees to buy candy bars to support (b) (6), (b) (7)(C) school activities. As a (b) (6), (b) (7)(C) travels through production units in order to reach (b) (6), (b) (7)(C) work area for various jobs, (b) (6), (b) (7)(C) brings a (b) (6), (b) (7)(C) cart with (b) (6), (b) (7)(C) as (b) (6), (b) (7)(C) travels through the plant. (b) (6), (b) (7)(C) kept a box of candy bars on (b) (6), (b) (7)(C) cart and sold them to employees as (b) (6), (b) (7)(C) went through the production units. Like (b) (6), (b) (7)(C) was not on break when (b) (6), (b) (7)(C) spoke to fellow employees about buying candy bars off of (b) (6), (b) (7)(C) cart. (b) (6), (b) (7)(C) had the cart with (b) (6), (b) (7)(C) and was passing through production units as part of (b) (6), (b) (7)(C) work. To the Union's knowledge, (b) (6), (b) (7)(C)

was not disciplined for (b) (6), (b) solicitation, or for stopping to talk to co-workers on the way to (b) (6), (b) assignment. It is extremely unlikely that Kumho management did not have knowledge of (b) (6), (b) (7)(C) activity, as security cameras capture the vast bulk of activity in the plant, and (b) (6), (b) (7)(C) solicitation was open and broad. In (b) (6), (b) (7)(C) case, for example, there were no supervisors around when (b) (6), (b) distributed shirts, but supervisors shortly had knowledge of (b) (6), (b) activity.

In addition, during the Employer's pre-election campaign, other bargaining unit employees have distributed anti-union campaign materials on work time, and have not been disciplined. (b) (6), (b) (7)(C) witnessed bargaining unit employees from the (b) (6), (b) (7)(C) department handing out "vote no" flyers during the campaign. Other Kumho employees, including (b) (6), (b) (7)(C) and USW staff, including Staff Representative Alexander Perkins, witnessed (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), a bargaining unit employee, distributed materials telling employees to vote against union representation. (b) (6), (b) (7)(C) distributed material during (b) (6), (b) shift and was not disciplined.

In an analysis distinct from *Wright Line*, The Board has held that "when an employer has failed to adopt and publish a valid rule regulating union activity during work time, discipline for that reason will be upheld only when the employer demonstrates that it acted in response to an actual interference with or disruption of work." *Cal Spas*, 322 NLRB 41, 56 (1996), enf'd in relevant part 150 F.3d 1095 (9th Cir. 1998), citing *Mast Advertising & Publishing*, 304 NLRB 819, 827 (1991). In such cases, the only question is whether the employer can prove that the employee's protected activity actually interfered with or disrupted work.

It does not appear that Kumho has published a valid rule regulating union activity. Kumho may not rely on its handbook rules as a legitimate justification for (b) (6), (b) (7)(C) discipline. Kumho employees including (b) (6), (b) (7)(C) have been told by supervisors that the handbooks that they were issued have changed, and that the rules are different since the 2017 union election. However employees were not issued new handbooks. Because (b) (6), (b) (7)(C) conduct did not disrupt production or interfere with (b) (6), (b) work or other employee's work, (b) (6), (b) discipline was illegal under *Cal Spas*, 322 NLRB 41, 56 (1996).

Finally, (b) (6), (b) (7)(C) discipline and the public way it was handled demonstrates that (b) (6), (b) termination was intended to send a threatening message to employees on election day. (b) (6), (b) was walked out publicly by two supervisors, and (b) (6), (b) received messages from employees demonstrating that they knew that (b) (6), (b) had been terminated for wearing a USW T-shirt. This threat, and its dissemination on election day, further violate Section 8(a)(1).

(b) (6), (b) (7)(C) was indisputably disciplined because of (b) (6), (b) protected activity – handing out union T-shirts on the day of a union election. The timing of the discipline, the falsity of the allegations against (b) (6), (b) and the disproportionate harshness of the discipline establish the Employer's discriminatory motive. Further, the Company cannot establish an affirmative defense

under *Wright Line*. The Region should therefore issue Complaint in this matter, and seek a make-whole remedy for (b) (6), (b) (7)(C)

Respectfully submitted,

/s/ Keren Wheeler

Keren Wheeler

Assistant General Counsel

United Steelworkers

60 Blvd. of the Allies, Rm 807

Pittsburgh, PA 15237



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 10
233 Peachtree St NE
Harris Tower Ste 1000
Atlanta, GA 30303-1504

Agency Website: www.nlrb.gov
Telephone: (404)331-2896
Fax: (404)331-2858

December 30, 2019

Kim Hyunho, President
Kumho Tire Georgia
3051 Kumho Pkwy
Macon, GA 31216

Re: Kumho Tire Georgia
Case 10-CA-247965

Dear Hyunho:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "LH", with a long horizontal line extending to the right.

LISA HENDERSON
Acting Regional Director

cc: Keren Wheeler, Esquire
United Steelworkers
60 Boulevard of the Allies
PITTSBURGH, PA 15222

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER**DO NOT WRITE IN THIS SPACE**

Case

10-CA-248196

Date Filed

September 13, 2019

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Kumho Tires		b. Tel. No. (478) 812-9595
		c. Cell No.
		f. Fax No.
d. Address (Street, city, state, and ZIP code) 3051 Kumho Parkway GA Macon 31216-_____	e. Employer Representative Hyunho Kim President	g. e-Mail
		h. Number of workers employed 325
i. Type of Establishment (factory, mine, wholesaler, etc.) Tires	j. Identify principal product or service	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 3 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

--See additional page--

3. Full name of party filing charge (if labor organization, give full name, including local name and number)Richard Rouco Title: Attorney
United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union**4a. Address (Street and number, city, state, and ZIP code)**60 Boulevard of the Allies
PA Pittsburgh 15222-_____4b. Tel. No.
(412) 562-2413

4c. Cell No.

4d. Fax No.

4e. e-Mail
msomma@usw.org**5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)****6. DECLARATION**

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Richard P. Rouco
(signature of representative or person making charge)Richard P. Rouco
Title: Attorney
(Print/type name and title or office, if any)Tel. No.
(205) 870-9989

Office, if any, Cell No.

Fax No.
(205) 803-4143e-Mail
rrouco@qcwdr.com2 - 20th Street North Suite 930
Address Birmingham AL 35203-09/13/2019 13:29:32
(date)**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)****PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Basis of the Charge

8(a)(3)

Within the previous six months, the Employer discharged an employee(s) because the employee(s) joined or supported a labor organization and in order to discourage union activities and/or membership.

Name of employee discharged	Approximate date of discharge
(b) (6), (b) (7)(C)	

8(a)(1)

Within the previous six months, the Employer discharged an employee(s) because the employee(s) engaged in protected concerted activities by, inter alia, protesting terms and conditions of employment and in order to discourage employees from engaging in protected concerted activities.

Name of employee discharged	Approximate date of discharge
(b) (6), (b) (7)(C)	

Additional Information in Support of Charge

Charging Party Name : Richard Rouco

Inquiry Number : (b) (6), (b) (7)(C)

Date Submitted : 09/13/2019 13:29:32

Please provide a brief description of the specific conduct involved in your charge. The information you provide may be viewed by the charged party in the event of a formal proceeding, so PLEASE DO NOT GIVE A DETAILED ACCOUNT OF YOUR CHARGE OR A LIST OF POTENTIAL WITNESSES AT THIS TIME. A Board Agent will contact you to obtain this and other detailed information after your charge is docketed. After you submit this E-Filed Charge form, you will receive a confirmation email with an Inquiry Number (Sample Inquiry Number: 1-1234567890) and a link to the E-Filing web page. You may use the link and the Inquiry number provided in the email to e-file any additional documents you wish to present in support of your charge.

Additional Information Provided:

During the preceding six month period, the Employer terminated the employee because of a union representation election scheduled on September 5 and 6, 2019. The employer further subjected the employee to a prolonged suspension and subsequent termination because (b) (6) complained about the terms and conditions of employment including but not limited to unfair discipline and unfair overtime assignments.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 10
233 Peachtree Street NE
Harris Tower Suite 1000
Atlanta, GA 30303-1504

Agency Website: www.nlr.gov
Telephone: (404)331-2896
Fax: (404)331-2858



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September 13, 2019

Hyunho Kim, President
Kumho Tires
3051 Kumho Parkway
Macon, GA 31216

Re: Kumho Tires
Case 10-CA-248196

Dear Mr. Kim:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney Laura Evins whose telephone number is (470)343-7482. If this Board agent is not available, you may contact Supervisory Field Attorney MATTHEW TURNER whose telephone number is (470)343-7497.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not

enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott C. Thompson", written over a horizontal line.

SCOTT C. THOMPSON
Acting Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER

10-CA-248196

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)**2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)**3. IF A CORPORATION or LLC**A. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS**5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates)

YES NO

A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (Check the largest amount)
☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. Did you **begin operations within the last 12 months?** If yes, specify date: _____**10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 10
233 Peachtree Street NE
Harris Tower Suite 1000
Atlanta, GA 30303-1504

Agency Website: www.nlrb.gov
Telephone: (404)331-2896
Fax: (404)331-2858



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September 13, 2019

Maria Somma, Director of Organizing
United Steelworkers International Union
60 Boulevard of the Allies
Pittsburgh, PA 15222

Re: Kumho Tires
Case 10-CA-248196

Dear Ms. Somma:

The charge that you filed in this case on September 13, 2019 has been docketed as case number 10-CA-248196. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney LAURA EVINS whose telephone number is (470)343-7482. If this Board agent is not available, you may contact Supervisory Field Attorney MATTHEW TURNER whose telephone number is (470)343-7497.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text

messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.


Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



SCOTT C. THOMPSON
Acting Regional Director

cc: Richard P. Rouco, Attorney
Quinn, Connor, Weaver, Davies
& Rouco, LLP
2 - 20th Street North
Suite 930
Birmingham, AL 35203

Copy of charge only sent to:

David R. Jury, General Counsel
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial
and Service Workers International Union,
AFL-CIO, CLC
60 Boulevard of the Allies, Room 807
Pittsburgh, PA 15222-1214



577 Mulberry St.
Suite 710
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MHaas@constangy.com
478.621.2426

October 18, 2019

VIA ELECTRONIC MAIL – laura.evins@nlrb.gov

Laura Evins
Field Attorney
National Labor Relations Board
Region 10
233 Peachtree St NE Harris Tower Ste 1000
Atlanta, GA 30303-1504

RE: Kumho Tires, 10-CA-248196

Dear Mrs. Evins:

This represents the employer's position regarding the above-referenced unfair labor practice charge, as described in the letter dated September 20, 2019. The Employer denies violating the National Labor Relations Act in any fashion.

(b) (6), (b) (7)(C) Disciplinary History

(b) (6), (b) (7)(C) (hereinafter (b) (6), (b) (7)(C)) was hired by the Employer in (b) (6), (b) (7)(C) as an (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) Exhibit A, (b) (6), (b) (7)(C) was suspended beginning on (b) (6), (b) (7)(C) 2019, and later terminated for the reasons described below.

(b) (6), (b) (7)(C) was formally disciplined for two serious performance deficiencies within a (b) (6), (b) (7)(C) period, both of which had nothing to do with (b) (6), (b) (7)(C) support for the union, participation in union activity, or complaints related to (b) (6), (b) (7)(C) employment.

During the evening shift on March 23, 2019, (b) (6), (b) (7)(C) became aware of an issue with APU5¹. At around 1 A.M., the settings of the production machine where (b) (6), (b) (7)(C) worked were incorrectly set, which caused a defect in the tires that were being made at that time. Under the proper procedure, (b) (6), (b) (7)(C) is required to verify the settings on the APU every ten minutes, which (b) (6), (b) (7)(C) failed to complete.

¹ APU stands for "automated production unit."

(b) (6), (b) (7)(C) violated numerous company rules and procedures when (b) (6), (b) (7)(C) failed to check the settings of the APU, which included:

Prohibited Conduct

Listed below are some of the prohibited acts that, if committed, will be grounds for disciplinary action, up to and including termination. This list of prohibited conduct is illustrative only; other types of conduct injurious to security, personal safety, productivity, employee welfare and the Company's operations or any other Company interest may also be prohibited. Violation of the following will result in discipline up to and including termination:

...

17. Poor job performance or productivity.

...

27. Violation of any safety, health, security or Company policies, rules or procedures.

Exhibit B (b) (6), (b) (7)(C) issued a written reprimand to (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) 2019 for the incident on the evening of March 23, 2019. Exhibit C (b) (6), (b) (7)(C) refused to sign the reprimand.

On (b) (6), (b) (7)(C) 2019, (b) (6), (b) (7)(C) was again involved in a performance related incident at work. (b) (6), (b) (7)(C) utilized an incorrect type of rubber when loading the production machine. Instead of grabbing the correct rubber (designated as type 1895), (b) (6), (b) (7)(C) failed to follow the proper protocol and did not verify the correct rubber to place in the APU. The rubber used by (b) (6), (b) (7)(C) and the rubber that should have been used consist of very different chemical compounds. (b) (6), (b) (7)(C) error caused 90 green case tires to be scrapped, thirty minutes of production down time, and loss of revenue for the company. (b) (6), (b) (7)(C) was suspended pending an investigation by (b) (6), (b) (7)(C).

After the (b) (6), (b) (7)(C) incident (b) (6), (b) (7)(C) made the decision to terminate (b) (6), (b) (7)(C) based on (b) (6), (b) (7)(C) poor job performance. (b) (6), (b) (7)(C) issued a Disciplinary Termination of Employment on (b) (6), (b) (7)(C) 2019. Exhibit D (b) (6), (b) (7)(C) then directed the HR Department to terminate (b) (6), (b) (7)(C) employment and issue a separation notice. (b) (6), (b) (7)(C) a (b) (6), (b) (7)(C) who last worked for Kumho on (b) (6), (b) (7)(C) 2019, was in charge of mailing out the separation notice. Exhibit E. The notice was misplaced during the transition of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) did not receive a copy as intended by the Employer.

Still believing that (b) (6), (b) (7)(C) was employed by the Employer, (b) (6), (b) (7)(C) called (b) (6), (b) (7)(C) an (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) 2019, to inquire about the status of (b) (6), (b) (7)(C) employment. After investigating, (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had been terminated effective (b) (6), (b) (7)(C) 2019. (b) (6), (b) (7)(C) responded that (b) (6), (b) (7)(C) did not receive a separation letter and that (b) (6), (b) (7)(C) would call the EEOC. (b) (6), (b) (7)(C) mailed (b) (6), (b) (7)(C) another copy of the separation notice on (b) (6), (b) (7)(C) 2019.

The Employer was well within its right to terminate (b) (6), (b) (7)(C) employment (b) (6), (b) (7)(C) received and acknowledged the following policy related to performance based terminations:

Other Forms of Separation

An individual's employment with the Company may also be terminated for, but not limited to, any of the following reasons:

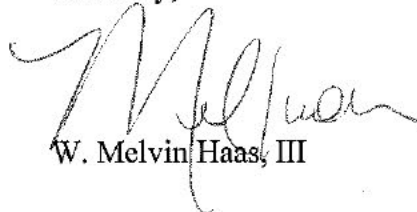
- Elimination of the employee's position;
- Retirement;
- When deemed appropriate for reasons other than job abandonment; and
- Performance-based release.

A performance-based release is a separation initiated by the Company for unacceptable job performance.

Exhibit B. (b) (6), (b) (7)(C) termination was based solely on (b) (6), (b) (7)(C) poor performance. Although (b) (6), (b) (7)(C) has made other allegations, there is not any evidence to support (b) (6), (b) (7)(C) claims. (b) (6), (b) (7)(C) did not discuss the union, union activity, or union support with (b) (6), (b) (7)(C) at any time. At no time did (b) (6), (b) (7)(C) protest the terms or conditions of (b) (6), (b) (7)(C) employment or any issue related to the payment of overtime.

Based on the above, the Employer respectfully requests the dismissal of this charge absent withdrawal. If you require any additional information, please do not hesitate to contact me.

Sincerely,



W. Melvin Haas, III

WMH (b) (6), (b) (7)(C)
Attachments



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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January 7, 2020

Melvin Haas, Attorney
Constangy, Brooks, Smith & Prophete LLP
577 Mulberry St Ste 710
Macon, GA 31201-8588

Re: Kumho Tires
Case 10-CA-248196

Dear Mr. Haas:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

LISA HENDERSON
Acting Regional Director

cc: Hyunho Kim, President
Kumho Tires
3051 Kumho Parkway
Macon, GA 31216

Richard P. Rouco, Attorney
Quinn, Connor, Weaver, Davies & Rouco, LLP
2 - 20th Street North, Suite 930
Birmingham, AL 35203

Maria Somma, Director of Organizing
United Steelworkers International Union
60 Boulevard of the Allies
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